

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey Graetz	Team: Bias Squad #02	CCRB Case #: 202207643	<input type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/05/2022 11:26 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 5/5/2024	Precinct:
Date/Time CV Reported Sun, 11/06/2022 12:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/09/2022 9:30 AM

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Dashawn Fogah	26946	971936	115 PCT
2. PO Christian Prate	21233	971619	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Rahuel Bhardwaj	22709	962256	115 PCT
2. PO Tristan Etienne	25881	971924	115 PCT
3. PO Michael Valverde	00905	966896	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Dashawn Fogah	Abuse: Police Officer Dashawn Fogah's failure to act was based on actual or perceived immigration status	§ 87(2)(b)
B. PO Christian Prate	Abuse: Police Officer Christian Prate's failure to act was based on actual or perceived immigration status	§ 87(2)(b)
C. PO Christian Prate	Abuse: Police Officer Christian Prate failed to obtain language interpretation services for § 87(2)(b)	§ 87(2)(b)
D. PO Dashawn Fogah	Abuse: Police Officer Dashawn Fogah failed to obtain language interpretation services for § 87(2)(b)	§ 87(2)(b)
E. PO Christian Prate	Abuse: Police Officer Christian Prate's failure to act was based on actual or perceived national origin	§ 87(2)(b)
F. PO Dashawn Fogah	Abuse: Police Officer Dashawn Fogah's failure to act was based on actual or perceived national origin	§ 87(2)(b)
G. PO Dashawn Fogah	Abuse: Police Officer Dashawn Fogah refused to provide his name to § 87(2)(b)	§ 87(2)(b)
H. PO Dashawn Fogah	Abuse: Police Officer Dashawn Fogah refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
I. PO Christian Prate	Abuse: Police Officer Christian Prate refused to provide his name to § 87(2)(b)	§ 87(2)(b)
J. PO Christian Prate	Abuse: Police Officer Christian Prate refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
K. PO Dashawn Fogah	Abuse: Police Officer Dashawn Fogah improperly used his body-worn camera.	§ 87(2)(b)
L. PO Christian Prate	Abuse: Police Officer Christian Prate improperly used his body-worn camera.	§ 87(2)(b)

## Case Summary

On November 6, 2022, § 87(2)(b) filed this complaint with the Internal Affairs Bureau through a 911 call (**BR 10, BR 01**). The CCRB received the complaint on November 10, 2022.

On November 5, 2022, at § 87(2)(b) in Queens, at around 11:26 p.m., § 87(2)(b) was inside his parked car when it was side swiped by another motorist, identified by the CCRB as § 87(2)(b). § 87(2)(b) believed § 87(2)(b) was drunk and called the police. Police Officer Christian Prate and Police Officer Dashawn Fogah – both of the 115th Precinct – responded. PO Prate and PO Fogah issued § 87(2)(b) a summons for failing to provide proof of insurance, but refused to administer a field sobriety test. § 87(2)(b) believed PO Prate and PO Fogah did not administer a field sobriety test or take enforcement action against § 87(2)(b) because § 87(2)(b) allegedly told the officers that he was an American citizen (**Allegations A-B: Abuse of Authority - Biased Policing**, § 87(2)(g)). § 87(2)(b) also believes he was ignored because he does not speak English. PO Prate and PO Fogah failed to obtain language interpretation services for § 87(2)(b) and no language services were provided until other officers – Police Officer Tristan Etienne and Police Officer Rahuel Bhardwaj, also of the 115th Precinct – responded to the scene (**Allegations C-D: Abuse of Authority**, § 87(2)(g)). **Allegations E-F: Abuse of Authority - Biased Policing**, § 87(2)(g).

In addition, PO Prate and PO Fogah allegedly refused to provide their names and shield numbers to § 87(2)(b) (**Allegations G-J: Abuse of Authority**, § 87(2)(g)). Finally, PO Prate and PO Fogah improperly deactivated their body worn cameras before the incident had concluded (**Allegations K-L: Abuse of Authority**, § 87(2)(g)).

The CCRB obtained body worn camera footage for parts of this incident (**BR 02-05**).

## Findings and Recommendations

**Allegation (A) Biased Policing: Police Officer Dashawn Fogah’s failure to act was based on actual or perceived immigration status.**

**Allegation (B) Biased Policing: Police Officer Christian Prate’s failure to act was based on actual or perceived immigration status.**

On November 5, 2022, at § 87(2)(b) in Queens, at around 11:26 p.m., § 87(2)(b) side swiped § 87(2)(b) parked car. § 87(2)(b) alleges that § 87(2)(b) was apparently drunk and could barely walk (**BR 06**). § 87(2)(b) offered § 87(2)(b) \$100 dollars to pay for the scratch on § 87(2)(b) car. § 87(2)(b) refused the \$100 dollars because it would not cover the necessary repairs. § 87(2)(b) told § 87(2)(b) he would call the police because § 87(2)(b) was drunk. § 87(2)(b) allegedly responded, “yes, I am drunk, but nothing happened to your vehicle. Take the \$100 dollars. If you call the police, they will not do anything to me because I am a citizen, and you are not from here.” § 87(2)(b) and § 87(2)(b) had this conversation in Spanish. § 87(2)(b) also needed the police to file a report so his insurance would pay for the repairs to his car.

§ 87(2)(b) alleges § 87(2)(b) told PO Fogah and PO Prate he was a citizen as soon as they arrived. PO Prate and PO Fogah then refused to administer a field sobriety test or arrest or detain § 87(2)(b) for drunk driving. § 87(2)(b) believes PO Prate and PO Fogah ignored § 87(2)(b) and refused to conduct a field sobriety test because § 87(2)(b) is a citizen.

PO Prate testified that he and PO Fogah had § 87(2)(b) step out of his car but did not conduct any other investigative steps regarding his sobriety (**BR 08**). § 87(2)(b) had no visible signs that he was

intoxicated. PO Prate would administer a sobriety test if a driver had bloodshot eyes or slurred their words. PO Prate does not remember seeing bloodshot eyes or uncoordinated movements and could not tell if § 87(2)(b) was slurring his words or if he just spoke “broken English.” PO Prate and PO Fogah determined § 87(2)(b) was tired from a long day at work and decided § 87(2)(b) wife could drive him home.

PO Fogah also testified that he and PO Prate determined § 87(2)(b) was not drunk, and was merely tired from work, because § 87(2)(b) did not have any slurred speech, there was no smell of alcohol his breath, and he did not walk with a sway or otherwise exhibit evidence of being drunk (BR 07). PO Fogah also did not see any type of alcohol in § 87(2)(b) car. PO Fogah did not conduct a field sobriety test because it was unnecessary given the lack of evidence that § 87(2)(b) was drunk.

Neither PO Prate nor PO Fogah heard either § 87(2)(b) or § 87(2)(b) say anything about not being “from here” or being from America (BR 07-08). No civilian said they were a citizen. Neither officer discussed immigration status with either civilian or heard the civilians discussing their immigration status with each other. PO Prate noted that both civilians had New York state driver’s licenses (BR 08).

BWC from this incident does not capture any mention of citizenship (BR 02-05). However, as discussed in more detail below, the BWC recordings capture only a few minutes of audio from a much longer interaction. PO Prate’s first BWC recording (BR 03), which is the first recording of the incident, does not capture the audio from the early moments of the officers’ arrival. At 3:26 of PO Fogah’s second BWC recording, PO Prate says, “he doesn’t smell like anything. His eyes aren’t red. He just looks a little tired.” PO Fogah says, “no he doesn’t. Yeah . . . his car is clean.” PO Prate says, “we could see if his wife will come and drive the car home” and later adds “he doesn’t look like, he’s standing fine, so.” At 3:54 of the recording, PO Prate says “I’m going off, he’s not drunk.”

In the recording of § 87(2)(b) fifth 911 call, at time stamp 4:28, the interpreter translates § 87(2)(b) as saying “because this drunk man scratched my vehicle and he offered me \$100. He’s drunk and the police here doesn’t speak Spanish. As I’m not a citizen, and he is, they are treating us different. He’s drunk, he could kill someone like this but they won’t hear what I have to say and that’s not fair, they can’t do this.” (BR 11). It is unclear if § 87(2)(b) phone was on speakerphone during this call or if PO Prate, PO Fogah, or anyone at the scene other than § 87(2)(b) could hear the English translation of the comments regarding citizenship that § 87(2)(b) made in Spanish. Neither PO Fogah nor PO Prate speak Spanish.

§ 87(2)(b) alleges that § 87(2)(b) told PO Fogah and PO Prate his citizenship status soon after the officers arrived, which caused them to treat him more leniently. PO Fogah and PO Prate deny any knowledge of either § 87(2)(b) or § 87(2)(b) citizenship status. There is no audio of § 87(2)(b) preliminary interactions with PO Fogah and PO Prate. In addition, and as discussed below, most of PO Fogah’s and PO Prate’s interactions with § 87(2)(b) and § 87(2)(b) were not recorded on BWC. § 87(2)(g)

§ 87(2)(g)

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**Allegation (C) Abuse of Authority: Police Officer Christian Prate failed to obtain language interpretation services for § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Dashawn Fogah failed to obtain language interpretation services for § 87(2)(b)**

PO Prate and PO Fogah arrived at § 87(2)(b) at 11:41 p.m. on November 5, 2022.<sup>1</sup> PO Prate's BWC captures the first few minutes of the officers' arrival (**BR 03**). Immediately after arriving on the scene, PO Prate approaches § 87(2)(b) and PO Fogah can be seen speaking with § 87(2)(b). Much of PO Fogah's initial interaction with § 87(2)(b) can be seen on his first BWC recording, but there is no audio until PO Fogah and § 87(2)(b) have walked to § 87(2)(b) car and are with PO Prate and § 87(2)(b) (**BR 02**). PO Prate confirmed that PO Fogah was the first officer to approach § 87(2)(b) (**BR 08**).

In the recording of § 87(2)(b) third 911 call, which began at 11:39 p.m. and was three minutes and 13 seconds long, § 87(2)(b) speaks with a 911 operator in Spanish (**BR 13**). At time stamp 2:22 of this call, § 87(2)(b) can be heard speaking in English to someone who has arrived on the scene. This timing aligns with PO Prate and PO Fogah's time of arrival. § 87(2)(b) explains that he called the police, and a voice asks, "what happened?" § 87(2)(b) asks if the person speaks Spanish, and the voice responds "no." § 87(2)(b) returns to speaking in Spanish to the 911 operator. At 2:43, § 87(2)(b) sounds to be speaking some English to someone on the scene, but it is hard to understand. The other voice on the scene asks, "do you have your driver's license?" and § 87(2)(b) says "yes." Upon hearing the voice speaking to § 87(2)(b) in English on the third 911 call, PO Prate testified the voice sounds like PO Fogah, but he could not identify the voice with absolute certainty (**BR 08**). PO Fogah could not identify the voice in the third 911 call and did not know if it was his voice (**BR 07**).

Based on the timing of the third 911 call and the officers' arrival and the BWC evidence that PO Fogah spoke with § 87(2)(b) upon arrival, separately from PO Prate, along with PO Prate's testimony that the voice on the call sounds like PO Fogah's voice, the investigation concludes that PO Fogah was asked by § 87(2)(b) if he spoke Spanish and responded "no" shortly after PO Fogah arrived on the scene.

At 3:07 of PO Prate's first BWC recording (**BR 03**), PO Prate begins to explain "what is going to happen" to § 87(2)(b). § 87(2)(b) tells PO Prate that § 87(2)(b) has been drinking, but PO Prate says no, and that § 87(2)(b) does not smell like he has been drinking. PO Prate says § 87(2)(b) and § 87(2)(b) have each other's information and § 87(2)(b) can do an online report. As PO Prate gives these instructions, which is at 11:44 p.m. and the video's 3:27 time stamp, § 87(2)(b) explains that – as he said when he called the police – he needs to speak Spanish and does not understand what PO Prate is saying.

It should also be noted that PO Prate's first BWC recording captures PO Prate repeating himself when speaking with § 87(2)(b) and § 87(2)(b). At the video's time stamp 2:35, PO Prate asks § 87(2)(b) where his phone is. After repeating the question three times, PO Prate lifts up a phone to show § 87(2)(b) what PO Prate is asking for. The BWC demonstrates that PO Prate struggled to

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<sup>1</sup> Although PO Fogah's memo book records that officers arrived at 12:15 a.m. (**BR 09**), PO Prate confirmed that the first video from his BWC captures the beginning of the incident (**BR 08**), and PO Prate's BWC reflects PO Prate exiting his police vehicle at the scene at 23:41 (**BR 03**). The Event Chronology also notes § 87(2)(b) the male caller ("MC") – is speaking with an officer on the scene at 23:42 (**BR 01**). The investigation therefore determines that PO Prate and PO Fogah arrived at the scene at 11:41 p.m., despite PO Fogah's memo book entry to the contrary.

communicate with both § 87(2)(b) and § 87(2)(b) in English.

In the recording of § 87(2)(b) fifth 911 call, which began at 12:09 a.m. and was 11 minutes and 34 seconds long, § 87(2)(b) explains – through an interpreter – that the police on the scene do not speak Spanish and are not listening to what he has to say (**BR 11**). At the recording's 9:56 time stamp, an officer gets on the phone and tells the operator that the police are there. The 911 operator explains she has an interpreter on the line and the officer asks the interpreter to tell § 87(2)(b) the police are “getting the information from the other driver and a report will be made.” § 87(2)(b) responds, “okay well, yes, aside from the report, this man is drunk. He offered me money. I know you can do the alcohol test.” At time stamp 11:11, the officer tells the 911 operator he will have a Spanish-speaking officer come to the scene to translate and the call ends.

PO Fogah and PO Prate both identified the voice of the officer on the fifth 911 call to be PO Bhardwaj (**BR 07, BR 08**). PO Prate identified himself as calling PO Bhardwaj on his personal cell phone during his second BWC recording. PO Prate called PO Bhardwaj to come to the scene to make sure both drivers understood what happened because § 87(2)(b) kept calling 911 and so did not appear to understand that PO Prate and PO Fogah were going to make a police report and had issued a summons. PO Fogah believes PO Bhardwaj got PO Valverde – a Spanish speaking officer – on the phone to explain to § 87(2)(b) in Spanish that the PO Fogah and PO Prate would complete an accident report for him. PO Fogah believes § 87(2)(b) did not understand that the officers were filing a police report until he spoke with PO Valverde.

PO Fogah did not recall if he offered any interpretation services or if either civilian asked for any interpretation services (**BR 07**). PO Fogah did not know if interpretation services were offered to § 87(2)(b) before PO Bhardwaj called PO Valverde. PO Fogah uses the Language Line on his department cell phone if he cannot understand or hold a conversation with a civilian. PO Fogah works in Jackson Heights with a lot of Spanish-speaking civilians and estimates that he uses the Language Line every week and was doing so in November 2022.

PO Prate described both civilians as speaking “broken English” (**BR 08**). Each civilian spoke English back to PO Prate and understood the questions he was asking them. When asked to explain what he meant by “broken English,” PO Prate explained it was not clear English, both civilians spoke with an accent, and PO Prate could tell English was neither civilian's first language. When interacting with a civilian for whom English does not appear to be their first language, PO Prate tries to communicate with them the best they can. PO Prate uses the Language Line if the civilian does not speak any English. PO Prate encounters civilians who require interpretation services at more than 50 percent of the jobs he responds to and uses interpretation services probably every day. PO Prate could not offer either civilian interpretation services because the screen of his job phone was broken at the time, so he could not use the Language Line. PO Prate does not remember if he discussed using PO Fogah's phone to use the Language Line with PO Fogah. PO Prate did not offer interpretation services before PO Bhardwaj used interpretation services because he could not use his broken phone to access the Language Line.

NYPD Patrol Guide, Procedure 212-90 (**BR 14**), states that officers should obtain the services of an interpreter or utilize the language skills of a bilingual officer or civilian when they encounter a limited English proficient (“LEP”) person and interpretation is necessary. The procedure to provide interpretation/translation services for members of the public in the field should be complied with “[i]f doubt exists regarding whether a person requires language assistance services, or if the person requests an interpreter.”

§ 87(2)(b) specifically told PO Prate that he needed to speak Spanish and asked PO Fogah if he could speak Spanish. The BWC also demonstrates that § 87(2)(b) did not understand everything the officers were saying to him in English, and both officers testified that § 87(2)(b) did not understand what the officers were trying to tell him – that a vehicle accident report would be made – until a Spanish-speaking officer was able to communicate with § 87(2)(b). § 87(2)(b) requested an interpreter or a Spanish-speaking officer both on the scene and repeatedly to different 911 operators. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Biased Policing: Police Officer Christian Prate’s failure to act was based on actual or perceived national origin.**

**Allegation (F) Biased Policing: Police Officer Dashawn Fogah’s failure to act was based on actual or perceived national origin.**

As discussed above, the investigation has determined that PO Prate and PO Fogah failed to obtain language interpretation services for § 87(2)(b) when responding to § 87(2)(b) 911 calls and investigating the vehicle accident between § 87(2)(b) and § 87(2)(b). A police officer’s failure to obtain adequate language interpretation services for an LEP civilian with whom the officer is interacting in his law enforcement capacity and whom the officer knows has limited proficiency in English is national origin discrimination under the law and thus violates the NYPD’s policy against biased policing.

Under NYPD Administrative Guide Procedure 304-17, NYPD officers’ law enforcement actions “must be based on the standards required by . . . applicable laws.” (BR 15). Administrative Guide § 304-17 explicitly provides that the NYPD “is committed to providing its programs and services without discrimination in accordance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin (*including language*)” (emphasis added). In turn, Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, prohibits government agencies that receive federal funding from discriminating on the basis of race, color, or national origin when providing services to the public (BR 16). *See also* U.S. Dep’t of Justice Implementing Regulations for Title VI, 28 C.F.R. §§ 42.104(b)(1)(iv) and (b)(2) (BR 17).

The U.S. Department of Justice, which enforces compliance with Title VI and its regulations by state and local law enforcement agencies that receive federal funding (including the NYPD), has clarified in its *Guidance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (“DOJ LEP Guidance”) that Title VI and its implementing regulations require those law enforcement agencies to take “reasonable steps” to ensure that LEP persons have “meaningful access to” and can “effectively participate in or benefit from” the agencies’ programs and activities, including street stops and field investigations, police responses to requests for assistance, and custodial interrogations, and that failure to take such reasonable steps during these kinds of police-civilian encounters violates Title VI’s prohibition against national origin discrimination. *See DOJ LEP Guidance*, 67 FR 41455, 41457, 41459, Appendix A (June 18, 2002) (BR 18). In addition, federal courts have repeatedly held that law enforcement and other government officials’ failure to provide language assistance to LEP persons constitutes national origin discrimination under Title VI. *See, e.g., U.S. v. Maricopa Cty.*, 915 F.Supp.2d, 1073, 1079-81 (D.Ariz. 2012) (BR 19); *Jones v. Gusman*, 296 F.R.D. 416, 454 (E.D. La. 2013) (BR 19); *New York v. Utica City School Dist.*, 177 F.Supp.3d 739, 752 (N.D.N.Y. 2016) (BR 21); *Methelus v. School Bd.*, 243 F.Supp.3d 1266, 1277-78 (M.D. Fla. 2017) (BR 22).



Another applicable law is the New York City Human Rights Law (NYCHRL), which prohibits an employee of a “provider of public accommodation” from “withhold[ing] from or deny[ing] to [a] person the full and equal enjoyment, on equal terms and conditions, of any of the . . . services” of that provider because of the person’s actual or perceived national origin. *See* N.Y.C. Admin. Code § 8-107(4) (**BR 23**). As a provider of services to the public, the NYPD is a “provider of public accommodation” under the NYCHRL, *see* N.Y.C. Admin Code § 8-102 (**BR 24**), and police officers, as NYPD employees, are therefore subject to the NYCHRL’s prohibition on national origin discrimination. In addition, the N.Y. State Appellate Division for the First Department has held that a New York City government agency’s failure to provide adequate language interpretation services to LEP persons attempting to access the agency’s services constitutes national origin discrimination under the NYCHRL. *See Boureima v. N.Y.C. Human Res. Admin.*, 128 A.D.3d 532 (1st Dep’t 2015) (citing *Colwell v. Dep’t of Health & Human Servs.*, 558 F.3d 1112, 1116-17 (9th Cir. 2009)) (**BR 25**).

Accordingly, by knowingly and intentionally failing to provide language interpretation services to § 87(2)(b) during their response to his vehicle accident and 911 calls on November 5, 2022, after § 87(2)(b) had specifically requested those services, § 87(2)(g)

**Allegation (G) Abuse of Authority: Police Officer Dashawn Fogah refused to provide his name to § 87(2)(b)**

**Allegation (H) Abuse of Authority: Police Officer Dashawn Fogah refused to provide his shield number to § 87(2)(b)**

**Allegation (I) Abuse of Authority: Police Officer Christian Prate refused to provide his name to § 87(2)(b)**

**Allegation (J) Abuse of Authority: Police Officer Christian Prate refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b) alleges that he asked for PO Fogah’s and PO Prate’s names (**BR 06**). § 87(2)(b) could not see the officers’ shield numbers and the officers acted a little upset when § 87(2)(b) tried to take photographs of their badges. § 87(2)(b) states the officers ignored him and never gave him any kind of information. § 87(2)(b) did not answer multiple questions about when in his interaction with PO Fogah and PO Prate he asked for their names.

PO Fogah denied refusing to provide either his name or his shield number (**BR 07**). PO Fogah did not think any civilian asked him for his shield number at any point during the incident and did not remember a civilian asking for his name. PO Fogah also noted that § 87(2)(b) recorded the entire interaction on his cell phone.

PO Prate does not remember any civilian asking for his name or shield number and denies refusing to provide either his name or his shield number during the incident (**BR 08**). PO Prate also noted that PO Fogah’s name and shield number were on the summons given to § 87(2)(b)

§ 87(2)(b) is not captured asking either PO Prate or PO Fogah for their name or shield number in any of the BWC footage of the incident (**BR 02-05**). However, as discussed below, the video captures less than ten minutes of a 50-minute incident.

Administrative Guide Procedure 304-11 (**BR 26**) requires MOS to “courteously and clearly state [their] rank, name, shield number and command, or otherwise provide them, to anyone who

requests [them] to do so.”

§ 87(2)(g)

**Allegation (K) Abuse of Authority: Police Officer Dashawn Fogah improperly used his body-worn camera.**

**Allegation (L) Abuse of Authority: Police Officer Christian Prate improperly used his body-worn camera.**

As explained above, PO Prate and PO Fogah arrived at § 87(2)(b) at 11:41 p.m. on November 5, 2022. Each officer has a four or five-minute BWC recording that captures most of the first few minutes of the incident and end at 11:45 p.m. (BR 02-03). Both officers reactivate their BWCs about 11 minutes later, at 11:56 p.m., and record an additional four minutes of the interaction (BR 04-05). PO Fogah and PO Prate did not reactivate their BWC before leaving § 87(2)(b) at around 12:31 a.m. on November 6, 2022 (BR 09).<sup>2</sup> PO Prate and PO Fogah left the scene after § 87(2)(b) wife arrived and drove § 87(2)(b) away in § 87(2)(b) car (BR 07, BR 08).

PO Prate testified that BWC can be turned off when the situation is resolved and no one is hurt or uncared for (BR 08). Here, PO Prate turned off his BWC after explaining to § 87(2)(b) that a report would be made based on the other driver not having insurance and giving a summons to § 87(2)(b). Both drivers had the other’s information. PO Prate did not remember why he reactivated his BWC. PO Prate turned off his BWC for the second time after he and PO Fogah determined § 87(2)(b) was tired but not intoxicated and § 87(2)(b) wife was going to come and drive § 87(2)(b) home. There was no need for PO Prate and PO Fogah to keep their BWCs on at that point because no one was in danger.

PO Fogah testified that it is procedure to activate BWC when officers arrive at a vehicle accident and to turn BWC off at the end of the incident (BR 07). The end of a vehicle accident incident occurs when the necessary reports are filed to make both parties happy. PO Fogah turned his BWC off for the first time because the incident was concluded after he issued § 87(2)(b) a summons and he and PO Prate had decided to complete the police accident report for § 87(2)(b). PO Fogah did not recall why he turned his BWC back on. PO Fogah turned off his BWC for the second time after he and PO Prate told § 87(2)(b) that they would file a police accident report and after the officers got in contact with § 87(2)(b) wife. However, PO Fogah was still on the scene when § 87(2)(b) wife arrived and left with § 87(2)(b). PO Fogah did not know why he and PO Prate did not leave on their BWC until § 87(2)(b) wife arrived. PO Fogah testified that he and PO Prate probably should have left their BWCs on to confirm that § 87(2)(b) wife came and confirmed § 87(2)(b) was drowsy.

PO Prate’s and PO Fogah’s first BWC recordings show the first few minutes of the interaction after the officers have arrived (BR 02-03). PO Prate’s video captures PO Prate asking § 87(2)(b) for his

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<sup>2</sup> Although PO Fogah’s memo book did not record the correct time of arrival, PO Fogah confirmed that the time of final disposition – 12:31 a.m. – is when he and PO Prate returned to the station house to complete the police accident report (BR 07). PO Fogah and PO Prate leaving the scene at around 12:31 a.m. also accords with both officer’s memory that they were on the scene when PO Bhardwaj was there, who can be heard speaking with the operator on the fifth 911 call at around 12:21 a.m. (BR 11) (at the end of the 11:34 minute 911 call that started at 12:09:28 a.m., BR 01).



driver's license, registration, and insurance, PO Prate taking photographs of § 87(2)(b) information, and PO Prate explaining to § 87(2)(b) that § 87(2)(b) had not been drinking because he did not smell like alcohol and that § 87(2)(b) could file a report online (**BR 03**). Although the first minute of PO Fogah's BWC visually captures PO Fogah interacting with § 87(2)(b) there is no audio because PO Fogah failed to activate his BWC until joining PO Prate at § 87(2)(b) car, where PO Prate appears to activate PO Fogah's BWC for him (**BR 02**). PO Fogah's BWC recording then captures some of what PO Prate's BWC captures and PO Fogah beginning to write a summons for § 87(2)(b)

PO Fogah's second BWC recordings show PO Fogah approaching § 87(2)(b) car where § 87(2)(b) is sitting in the front seat. § 87(2)(b) gets out of his car and PO Prate and PO Fogah then search § 87(2)(b) car (**BR 04**). PO Prate then has a brief conversation with § 87(2)(b) wife on § 87(2)(b) phone and tells § 87(2)(b) to speak with her. PO Prate and PO Fogah say § 87(2)(b) does not smell, does not have red eyes, and that his car is clean. The officers decide to see if § 87(2)(b) wife will come and drive the car home, and then turn off their BWCs. PO Prate's second BWC recording captures the same (**BR 05**).

§ 87(2)(b) told the investigation that he gave the officers permission to search his car (**BR 12**).

Patrol Guide Procedure 212-123 requires officers to "record continuously, until investigative, enforcement, or other police action is concluded" (**BR 27**). "Police action" is defined as "Any police service, as well as, law enforcement or investigative activity conducted in furtherance of official duties. Police action includes responding to calls for service, addressing quality of life conditions, handling pick-up assignments and any self-initiated investigative or enforcement actions such as witness canvasses, vehicle stops and Investigative Encounters."

Patrol Guide Procedure 217-01 regarding vehicle collisions does not include any specific instructions regarding when a BWC should be activated or turned off (**BR 28**).

Although PO Fogah and PO Prate were at § 87(2)(b) for approximately 50 minutes, PO Prate recorded only 9 minutes and 18 seconds of the interaction on his BWC – including two minutes of video without audio that are recorded before PO Prate activated his BWC – and PO Fogah recorded only 8 minutes and 13 seconds of the interaction on his BWC, including two minutes without audio. PO Fogah and PO Prate were responding to § 87(2)(b) 911 call for service and were therefore performing a police action as defined in Patrol Guide Procedure 212-213. The officers were thus required to record the incident continuously until it was concluded. PO Fogah and PO Prate each deactivated their BWC prematurely twice. None of the BWC recordings capture either officer telling § 87(2)(b) that the officers would be completing a vehicle accident report – an action that both officers point to as indicating the conclusion of the incident. Both initial BWC recordings are also concluded before § 87(2)(b) is given a summons. In addition, important pieces of the interaction are not captured on BWC. For example, neither officer could recall why they were prompted to turn their BWCs on for the second time, and no BWC recording captures the decision to ask § 87(2)(b) if the officers could search his car. Finally, no BWC recording captures PO Etienne and PO Bhardwaj responding to the scene. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 29**).

- PO Fogah has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject.
- PO Prate has been a member of service for one year and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)

### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation because it was investigated by the Racial Profiling and Biased Policing unit.
- As of April 19, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**BR 30**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: Bias Squad #2

Investigator:	<u>/s/ Casey Graetz</u> Signature	<u>Inv. Atty. Casey Graetz</u> Print Title & Name	<u>7/7/2023</u> Date
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Squad Leader:	<u>Tessa Yesselman</u> Signature	<u>IM Tessa Yesselman</u> Print Title & Name	<u>7/18/2023</u> Date
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Reviewer:	<u>Bianca Victoria Scott</u> Signature	<u>Dep. Dir. Bianca Victoria Scott</u> Print Title & Name	<u>11/9/2023</u> Date
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